JR-2022-LON-001485

In the Upper Tribunal (Immigration and Asylum Chamber) Judicial Review

In the matter of an application for Judicial Review

The King on the application of

MA
(ANONYMITY DIRECTION MADE)

Applicant

versus

Secretary of State for the Home Department

Respondent

ORDER

BEFORE Upper Tribunal Judge Perkins

HAVING considered all documents lodged and having heard Mr A Badar (Counsel, instructed by Longfellow Solicitors) for the applicant and Mr R Evans (Counsel, instructed by Government Legal Department) for the respondent at a hearing on 12 April 2023

IT IS ORDERED THAT:

(1) The application for judicial review is refused for the reasons in the attached judgment.

(2) The Applicant will pay the Respondent's reasonable costs to be assessed if not agreed.

(3) Permission to appeal is refused because I see no arguable error in my decision.

Signed: Jonathan Perkins

Upper Tribunal Judge Perkins

Dated: **13 December 2024**

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 17/12/2024

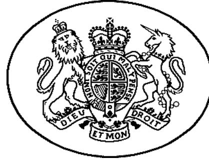
Solicitors:
Ref No.
Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).



Case No: JR-2022-LON-001485

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

13 December 2024

Before:

UPPER TRIBUNAL JUDGE PERKINS

- - - - - - - - - - - - - - - - - - - -

Between:

THE KING
on the application of
M A

Applicant

- and -

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

- - - - - - - - - - - - - - - - - - - -

Mr A Badar
(Counsel, instructed by Longfellow Solicitors) for the applicant

Mr R Evans
(Counsel, instructed by Government Legal Department) for the respondent

Hearing date: 12 April 2023

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J U D G M E N T

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Judge Perkins:

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 the applicant is granted anonymity. No one shall publish or reveal any information, including the name or address of the applicant, likely to lead members of the public to identify the applicant. Failure to comply with this order could amount to a contempt of court. I make this order because the case concerns allegations of domestic violence. I see no legitimate public

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interest in the identity of the people concerned rather than the facts of the case and I am anxious not to name a person accused of domestic violence in proceedings in which he or she is not a party and has no opportunity to assert a contrary case and, even more importantly, I do not want to discourage a victim of domestic violence from seeking relief because of a fear of publicity.

2. I apologise for the delay in promulgating this judgement. I sent the first draft for dictation shortly after the hearing and the typists records show that I was sent a draft on 17 April 2023. The typists are normally *extremely reliable* and I accept what they say but for some reason it did not come to my attention. This judgment was based on that draft. I was sent a copy when I again sent dictation to the typists. I do not want to suggest that the fault for the delay rests with anyone but me but I can assure the parties that the decision was made soon after the hearing.

3. The applicant is a citizen of Pakistan. He seeks an order quashing a decision of the respondent on 28 June 2022 upheld on administrative review on 29 July 2022 refusing him indefinite leave to remain as a person whose marriage has broken down because he is the victim of domestic violence.

4. He says, in extreme outline for the purpose of introduction, that his marriage broke down because his brother-in-law bullied him and assaulted him. A man whose marriage breaks down in such circumstances *may* qualify for leave to remain under the terms of the Rules and associated policies.

5. It is the respondent's case that the applicant "failed to provide sufficient documentary evidence to demonstrate that your marriage broke down as a result of domestic violence". I find that a regrettable phrase. It does not indicate if the respondent was not satisfied that there was domestic violence or was not satisfied that any such violence was causative of the marital breakdown or possibly was not satisfied about either requirement. There is no requirement in law for any documentary evidence to demonstrate that the marriage has broken down as a result of domestic violence and the phrase, at least on its own, does not explain why the documents that were provided were thought insufficient.

6. I had the benefit of a substantial agreed bundle prepared by the parties and served on the Tribunal. Regrettably, because of the constraints on the size of bundles that have been imposed on the Tribunal, it was not possible to make this available to me in a sensible way but it was broken down into five sub-volumes which made it hard to find things and I am extremely grateful to both Counsel for their patience at the start of the hearing in sorting out what material I had and indeed for their measured presentation of their cases which was particularly appreciated given the extreme emotional heat that the application has generated.

7. The case is properly pleaded; the applicant relies on two grounds which the respondent says are essentially variations on the same ground. The complaint is that the decision does not show sufficiently careful regard for the evidence that was produced.

8. Mr Badar drew my attention to the judgment of Knowles J in **R (on the application of Suliman) v SSHD [2020] EWHC 326 (Admin)** and particularly at paragraph 25 he said:

> "I [am] satisfied that the Secretary of State's determination that she was not satisfied these injuries were caused by the Claimant's wife is flawed and cannot stand. That is firstly because the Secretary of State did not address or deal with the reasons explained by the Claimant why he was reluctant to tell the police or the medical authorities. These were, variously, his own sense of shame, 'cowardness'; his residual love for his wife despite her behaviour; and his fear of losing her or getting her into trouble. If the Secretary of State was going to deal with matters fairly then this evidence needed to be confronted and a conclusion reached. I am bound to say that these explanations all strike me as being inherently plausible and the fairly typical response of an abused partner in a relationship. They provide at least an equally convincing explanation for why the Claimant said nothing at the time as the one reached by the Secretary of State, ie, that he had not been assaulted by his wife. Fairness required the Secretary of State to address it".

9. If I may presume to comment, I respectfully agree with Knowles J that cases involving domestic violence often require particular care when evidence is analysed because, for the reasons given by Knowles J, which are examples rather than an exclusive lists, there are many reasons why people who have been victims of domestic violence are coy about their experiences that are not present, for example, in the case of a person who is the victim of a violent attack in the street by a stranger.

10. This is not a case where there was disagreement between the parties about the law but I confirm that it was the Secretary of State's task to determine at least primarily if the applicant had shown that he was probably the victim of domestic violence and that that had caused the breakup of his marriage and it is my, significantly different, task to determine if the Secretary of State's conclusion was one that was open to her on the evidence that was in front of her. I am not here to determine for myself if I think the applicant was the victim of violence to determine these points for myself.

11. I consider in more care the Secretary of State's reasons.

12. The respondent recognised that the applicant entered the United Kingdom as a spouse with appropriate permission that lasted until April 2020 and that before the expiry of that he applied for and was given further leave that lasted until 3 February 2023.

13. On 10 November 2021 he applied for leave outside the Rules under the domestic violence concession. That was initially issued until 10 February 2022. There was a further application made on 28 January 2022 and this was refused. As indicated, it was refused because the applicant had "failed to provide sufficient documentary evidence to demonstrate that your marriage broke down as a result of domestic violence".

14. However, further reasons were given. The Secretary of State addressed her mind to the relevant Rules and reminded herself of the very wide definition of domestic violence introduced in March 2013 to include “any incident or pattern of incidents controlling, coercive or threatening behaviour, violence or abuse” committed by partners or family members and examples are given. Specific reference is made to support from “Merton Connected” (a community support group) and from the medical records and police records. The police records were particularly concerned with an incident that led to a police visit to the former matrimonial home on 16 February 2021. The refusal letter commented on all of these sources of evidence and found the evidence in total “insufficient, unconvincing and uniformly lacking in partiality or independence of source”.

15. The letter also made it plain that “none of the evidence submitted is sufficient to establish that, on the balance of probabilities, your relationship was caused to break down as a result of domestic violence”.

16. The applicant supported his application with a statement of truth. The copy provided to me is not dated or signed. It set out some of the applicant’s personal history and the events leading to his marriage and his disappointment with the way the marriage developed. He also complained how his wife and her brother “controlled all my activities and tracked my phone as well”. Essentially it was his case that they had all the passwords. He then talked about an occasion on 1 October 2020 when there was a disagreement and his wife told him to leave the house. He also explained how he did leave briefly but returned the next or later the same day.

17. He then recounted an incident beginning after dinner on 12 February 2021 when he started drinking. His wife came home on 13 February 2021 and criticised him for being drunk. He said that she had told him that he was not wanted in her life and told him to leave and leave the house. There was a noisy argument and she hid, locking herself in a toilet. Her brother came to the house soon afterwards and, according to the applicant, hit him in the chest and ripped his clothes and punched him in the eye. The applicant said that he brought a butter knife from the kitchen and threatened to cut himself if she did not forgive him. After hitting him the applicant’s brother then called for the police and told them that he had tried to commit suicide.

18. According to the statement the police came and decided to take no criminal action and his wife left.

19. The papers include a police report dated 13 February 2021, that being the date when an offence was said to have been committed. In that report the present applicant is described as the “victim”. The report noted that the applicant had been drinking heavily since the previous evening to the point that he had passed out on the kitchen floor. The applicant’s wife, according to that report, called her brother who was identified as a suspect. An assault was described and comments made that I think can be summarised adequately as nasty and degrading. This was the report made on 9 September 2021. I note that the report of 11 September 2021 refers to there being a welfare check conducted by officers on the 13th (of February?) and of the applicant making no complaints.

20. The applicant's general medical practitioner's records are available and are interesting. It is plain the applicant has been treated for excessive drinking but the entry of 22 February 2021 merits particular attention. The applicant then complained that his marriage had broken down and referred to his wife having left him "a few days ago" after finding him in a drunken stupor. The applicant said that his wife had gone to her brother's and they had both asked him to leave the flat. The same notes include the phrase "had altercation with her brother alleges brother-in-law assaulted him" but then went on to say the police had been called but were not pressing any charges saying they had statements from the wife and her brother and indeed sister-in-law.

21. It is easy to criticise with the benefits of hindsight and it would have been more helpful if the Secretary of State had more to say about the applicant's claim that he was being controlled by his wife and brother-in-law for some time. However, the points that were considered carefully were that the applicant's claim to have been the victim of violence was unsupported from any source. There was evidence of a fairly recent complaint to the general medical practitioner but nothing to indicate that there was anything to show to the practitioner to confirm the assault. There was no record of any markings on the body, for example. The police report is quite clear that the applicant did not make any complaints. I do not accept at face value the assertion that the police were not prepared to take any notice of complaints made. It must happen all the time when called to a fight that parties blame each other. It is also noted that the police officer did not think he was being told the truth and although that is of limited value it is something to which some weight can be attached.

22. It is quite plain from evaluating the evidence as a whole that the Secretary of State did look at the material before her and concluded, rationally, that there was nothing persuasive to support the applicant's allegations even though there was opportunity given to make a complaint by the police and that the marriage was not brought to an end by violence by the applicant's brother-in-law but by unhappiness cause or compounded by binge drinking.

23. In short, the decision was open to the respondent for the reasons given and no public law error has been established and I dismiss the application.~~~~0~~~~